

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JAMES PAYNE,

Petitioner,

v.

CIVIL ACTION NO. 2:10-cv-00221

DAVID BALLARD,

Respondent.

MEMORANDUM OPINION & ORDER

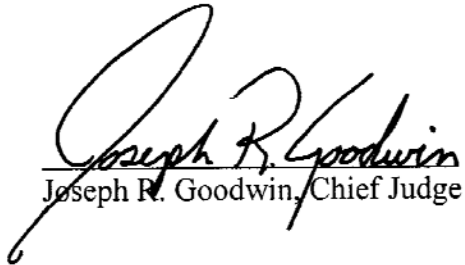
On May 19, 2010, Magistrate Judge Mary E. Stanley issued a Proposed Finding and Recommendation (“PF&R” [Docket 7]) recommending that the presiding district judge dismiss this matter without prejudice for failure to prosecute, and deny without prejudice the petitioner’s Application to Proceed Without Prepayment of Fees and Costs [Docket 1]. The petitioner has failed to file objections.

The failure to object to a magistrate judge’s report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge’s findings of fact and recommendation and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendation. The court **DISMISSES** this matter without prejudice for failure to prosecute, and

DENIES the petitioner's Application to Proceed Without Prepayment of Fees and Costs [Docket 1] without prejudice.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: June 8, 2010



Joseph R. Goodwin, Chief Judge